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Attorneys for Defendants Oregon Department of Corrections and Brandon Kelly

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Carlton Eugene Hayes, Plaintiff, v. Oregon Department of Corrections, Brandon Kelly - Oregon State Penitentiary- et al, Defendants.	Case No. 6:18-CV-2006-MC ANSWER AND AFFIRMATIVE DEFENSES <i>Jury Trial Requested</i>
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Defendants Oregon Department of Corrections (“ODOC”) and Brandon Kelly (collectively referred to as “State Defendants”), hereby answer and raise defenses to Plaintiff’s Complaint as follows:

GENERAL RESPONSE

Defendants deny each and every material allegation of Plaintiff’s Complaint not expressly admitted herein.

1.

Defendants admit Plaintiff is employed with ODOC at the Oregon State Penitentiary (“OSP”) but is currently on administrative leave without pay pending the outcome of criminal proceeding Marion County Circuit Court Case No. 18CR54712.

2.

Defendants admit Brandon Kelly is the Superintendent of OSP.

3.

To the extent the remaining allegations do not state legal conclusions to which no response is required, Defendants lack sufficient information to admit or deny and therefore deny the same.

FIRST AFFIRMATIVE DEFENSE

Failure to State Claim

4.

Plaintiff fails to state a claim upon which this Court can grant relief under one or more of the theories set forth in the Complaint.

SECOND AFFIRMATIVE DEFENSE

Oregon Tort Claims Act

5.

Plaintiff’s state and common law claims are subject to the requirements of the Oregon Tort Claims Act (“OTCA”), including, but not limited to, timely and adequate tort claim notice, the substitution of the State for the individually-named defendant, and pleading of tort claim notice in the Complaint.

THIRD AFFIRMATIVE DEFENSE

Statute of Limitations

6.

To the extent Plaintiff asserts liability for actions for which this matter was not timely filed, Plaintiff's claims are barred.

FOURTH AFFIRMATIVE DEFENSE

Eleventh Amendment Immunity

7.

Defendants allege they are immune from suit in federal court and protected under Eleventh Amendment immunity as to federal law claims asserted against individuals in their official capacities and as to state and common law claims.

FIFTH AFFIRMATIVE DEFENSE

Objective Basis for Decisions

8.

Defendants had valid, legitimate, objectively reasonable, non-discriminatory and non-retaliatory reasons for all actions taken and such actions were not based upon any improper motive or taken for any improper purpose.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff Responsible for Harm

9.

Some or all of the harm complained about was a result of the Plaintiff's own assumption of risk and actions, inactions, or participation in the activities.

RESERVATION OF ADDITIONAL DEFENSES

10.

Defendants reserve the right to assert additional defenses as may become known to them through investigation and discovery.

JURY TRIAL DEMAND

11.

Defendants demand a jury trial.

WHEREFORE Defendants pray as follows:

1. That Plaintiff be denied recovery or the relief requested upon the claims set forth in the Complaint and that the Complaint be dismissed with prejudice in its entirety;
2. That Defendants recover their reasonable costs and attorneys' fees expended in defense of this matter; and
3. That Defendants be granted such other and further relief as the Court deems just and reasonable.

DATED January 30, 2019.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Jessica Spooner

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Of Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on January 30, 2019, I served the foregoing ANSWER AND AFFIRMATIVE DEFENSES upon the parties hereto by the method indicated below, and addressed to the following:

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Tonyia J. Brady
Lafky & Lafky
429 Court St NE
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of Attorneys for Plaintiff

HAND DELIVERY
 MAIL DELIVERY
 OVERNIGHT MAIL
 TELECOPY (FAX)
 E-MAIL
 E-SERVE

s/ Jessica Spooner

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